IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

WP(C).No. 20422 of 2006(F)

PETITIONERS:

---

1. K.P. POULOSE,
   KOIKKARA PANAKKALODI HOUSE, NEDUMKULANGARA MALA,
   KUSUMAGIRI P.O., KAKKANAD, KOCHI.

2. MATHEW K.GEORGE, S/O. GEORGE,
   KOIKKARA PANAKKALODI HOUSE, NEDUMKULANGARA MALA,
   KUSUMAGIRI P.O., KAKKANAD, KOCHI.

BY ADV. SRI.C.AJITH KUMAR

RESPONDENTS:

---

1. THE SECRETARY,
   THRIKKAKARA GRAMA PANCHAYAT, THRIKKAKARA,KAKKANAD.

2. THE TALUK SURVEYOR,
   KANAYANNUR TALUK OFFICE, ERNAKULAM.

3. SMT. DAKSHAYANI, W/O. BABU,
   HOUSE NO.VIII/393, NEDUMKULANGARA MALA,
   KUSUMAGIRI P.O., KAKKANAD.

4. AYYAN,
   NEDUMKULANGARA MALA, KUSUMAGIRI P.O., KAKKANAD.

R2 BY GOVT. PLEADER MR.MATHEW G.VADAKKEL
R1 BY ADV.SRI.S.SHANAVAS KHAN
SRI.P.T.JOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

- -

W.P.(C)No.20422 of 2006

- -

Dated: 13th November, 2006

JUDGMENT

The grievance of the petitioners who are persons residing by the side of a panchayat road is that respondents 3 and 4 and other persons who are having properties on the sides of the road have encroached upon the road as a result of which the width of the road has become narrow. Everybody concedes that the issue can be properly resolved only on the basis of a measurement of the properties in question by the Taluk Surveyor. The Panchayat approached the Taluk Surveyor for measurement of the properties. The Taluk Surveyor issued Ext.P8 stating that the application submitted by the Panchayat was not in proper form. Under Ext.P8 the Panchayat was directed to file an application in form No.10 under the Survey and Boundaries Act. The learned Government Pleader submits that according to the instructions, the file relating to Ext.P8 is not traceable and that is why he is not able to conduct the measurements. The learned Standing Counsel for the Panchayat submits that subsequent to Ext.P8 the Panchayat has submitted a fresh application for measurement in the prescribed form.

2. Having regard to the grounds raised in the writ petition and the submissions addressed before me by Mr.C.Ajithkumar, learned

counsel for the petitioners, Mr.Shanavaskhan, learned Standing Counsel for the Panchayat and Mr.Mathew G.Vadakkel, learned Government Pleader, I am of the view that since the party respondents have not filed any counter affidavit in this case, the Writ Petition can be disposed of in the following terms:

The first respondent is permitted to file a fresh application before the 2nd respondent in form No.10 prescribed under the Survey and Boundaries Act. If such an application is filed by the 1st respondent within 10 days of the Panchayat receiving copy of this judgment, the 2nd respondent will give top priority to that application, conduct measurement of the properties in question with notice to the petitioners and also respondents 3 and 4 and furnish a plan on the basis of such measurement to the Panchayat and any other interested person who is desirous of getting copy of the plan. If the plan reveals that the allegations regarding encroachment raised by the petitioners are correct, the first respondent will take all necessary action for removing the encroachment revealed as per the plan. Action in this regard will be taken by the 1st respondent within two months of their receiving a copy of the plan from the Taluk Surveyor.

srd **PIUS C.KURIAKOSE, JUDGE**